IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision : December 07, 2006

Jage Ram versus State of Haryana

Coram: Hon'ble Mr. Justice Virender Singh

Present: None for the appellant
Mr. Man Mohan Sikka, Assistant Advocate General, Haryana

Virender Singh, J.

At the very outset it is worth mentioning here that the counsel for the appellant has not come present to assist this Court despite actual date notice being sent to him. Since the instant appeal is on the regular board of this Court since long, I intend to dispose of the same today itself. Mr. Man Mohan Sikka, learned Assistant Advocate General, Haryana has, however, rendered all possible assistance to this Court. The evidence of prosecution witnesses has been read out by him from the trial court records.

Appellant Jage Ram, aged 70 years (on the date of alleged recovery), who is on bail during the pendency of the instant appeal stands convicted under section 20 of the of the Narcotic Drugs and Psychotropic

Substances Act (hereinafter referred to as 'the Act') vide impugned judgment of learned Additional Sessions Judge, Sonepat dated 10/12.7.1993, has been sentenced to undergo RI for a period of ten years and to pay a fine of Rs one lac, in default of payment of fine to further undergo RI for two years. The recovery allegedly effected from him was of 500 grams of charas when he was apprehended by SI Devi Singh SHO of Police Station Baroda on 5.5.1992 when he was present in his house. Along with the aforesaid recovery of charas, 30 bottles of country liquor were also allegedly recovered from him for which a separate FIR was registered.

After the completion of the investigation, the appellant was challaned in the present case and was consequently charged under section 20 of the Act.

The prosecution in support of its case has examined SI Ajit Singh PW1 who had prepared the challan and had signed the report under section 173 Cr.P.C. PW2 HC Ram Dia who was posted as MHC in Police Station Baroda and who on receipt of the ruqa, had recorded formal FIR Ex. PA. The case property was also deposited with him by SI/SHO Devi Singh. On 18.5.1992, he had handed over the sample parcel and the specimen seal impression to Constable Ranbir Singh for further delivering it in the office of Chemical Examiner, Madhuban. PW3 HC Pawan Kumar is the witness to the recovery who stated that on 5.5.1992 at about 2 or 2.30 PM, when

they were present at Bus Stand Gangana, they received a secret information about the appellant selling the liquor at his house and thereafter the recovery was effected from the appellant. SI Devi Singh PW4 is the Investigation Officer of this case.

Affidavit Ex. PC of Constable Ranbir Singh who had taken the sample to FSL was tendered into evidence. Two independent witnesses, namely, Ram Rup and Ramesh who were joined from the public at the time of effecting the recovery were given up as having been won over. Reports of the Public Analyst was also tendered into evidence.

After appreciating the entire evidence, the appellant stands convicted and sentenced as stated above.

Mr. Sikka submits that in the present case section 50 of the Act is not attracted as the recovery of charas was effected per chance whereas the police had gone to the house of the appellant on receipt of the secret information about his selling the country liquor. He then submits that huge quantity of liquor was recovered from the appellant which cannot be foisted upon and, therefore, chance of false implication in this case is ruled out. The learned counsel on the basis of the aforesaid submissions contends that the appellant has no escape in this case.

The admitted position is that for the recovery of 30 bottles of country liquor, a separate case was registered against the appellant. What is to be appreciated now is as to whether the prosecution has been able to

prove the conscious possession of 500 grams of charas qua the appellant beyond any shadow of doubt or not. The plea of the appellant was that he has been falsely implicated by the police after he was brought from his house.

In order to substantiate the charge, the prosecution case is hinging upon statement of HC Pawan Kumar PW3 and SI Devi Singh PW4, the Investigating Officer. SI Devi Singh was also the SHO of Police Station Baroda where the present case was registered. It has come in the statement of Devi Singh that he had sealed the sample of 50 grams extracted from 500 grams of charas and thereafter the sample as well as remainder were put into two separate parcels which were sealed by him with his own seal bearing inscription 'DS'. He had also prepared the sample paper of the seal. All these items were taken into possession vide separate recovery memo. According to his statement case property was then deposited with MHC on the same day. According to the statement of HC Ram Dia PW2, the sample parcel was sent to the office of the Chemical Examiner through Constable Ranbir Singh on 18.5.1992 i.e. after 13 days of the alleged recovery.

From the aforesaid evidence one fact is very clear that the seal remained with SI Devi Singh, the Investigating Officer throughout. The case property was never produced by him before the Ilaqa Magistrate in compliance with the provisions of section 55 of the Act. From all these facts, it can comfortably be inferred that there were ample chances of

tampering with the case property. It is incumbent upon the prosecution to rule out any chance with regard to tampering with the case property at any stage. Had SI/SHO Devi Singh produced the case property which included the sample seal impression before the Ilaqa Magistrate, the concerned Magistrate would have considered all the facts or he could put his initials on the parcels or even on the sample impression chit. Simply that the sample impression chit was deposited along with case property in the same Police Station with MHC it would not lend any assurance of not tampering with the case property.

I find another flaw in the case of the prosecution in as much as CFSL Form was neither prepared at the spot nor deposited in the Malkhana as is clear from the evidence on record. Filling of such form at the spot has been considered as a very valuable safeguard as held in **Bhola Singh vs State of Punjab** 2005(2) RCR (Criminal) 520 and **Gurcharan Singh vs State of Punjab** 2005(4) RCR (Criminal) 681.

In the light of the aforesaid flaws, non giving of seal to the independent witness and instead being kept by Investigating Officer with himself casts doubt on the investigation conducted in this case especially with regard to link evidence which, no doubt, plays a pivotal role in such type of cases. In my considered view, the prosecution case is stumbling badly on this fatal issue which can be said to be enough to see the entire case with an eye of suspicion so as to extend the benefit of doubt to the

appellant.

Although Mr. Sikka is not aware of the out-come of the excise case registered against the appellant as he has not received any information from the concerned quarters, yet, in my view, the same has no bearing on the merits of the present case as it has to be decided independently on the evidence before me.

As a sequel to the aforesaid discussion, the net result is that the prosecution has failed to prove beyond shadow of reasonable doubt the charge of conscious possession of contraband (500 grams of charas) from the appellant and as such while extending the benefit of doubt to him, I hereby set aside the impugned judgment of conviction.

Consequently, the instant appeal is allowed and the appellant is acquitted of the charge. He is stated to be on bail and shall now be discharged of his bail bonds.

(Virender Singh)
Judge

December 07, 2006
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